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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,974	02/13/2002	Sheldon R. Pinnell	SKIC001	6893

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EXAMINER	
PATTEN, PATRICIA A	

ART UNIT	PAPER NUMBER
1651	

DATE MAILED: 05/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/074,974	Applicant(s) Pinnell et al.
	Examiner Patricia Patten	Art Unit 1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-28 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) _____ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☒ Claims 1-28 are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
18) ☐ Interview Summary (PTO-413) Paper No(s). _____
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-12, drawn to a method for extracting olive leaves, classified in class 424, subclass 725 for example.

II. Claims 13-15, drawn to a product obtained by the method of Group I, classified in class 424, subclass 777 for example.

III. Claims 16-26, drawn to a product comprising an olive extract along with vitamins, classified in class 554, subclass 8 for example.

IV. Claim 27, drawn to a method of treating skin, via topical administration of an extract of claim 1, classified in class 424, subclass 78.05 for example.

V. Claim 28, drawn to a method of treating skin via topical administration of an olive extract according to Claim 16 , classified in class 549, subclass 403 for example.

The inventions are distinct, each from the other because of the following reasons: Inventions I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different

functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the extraction of Group I is broad enough to encompass many extraction products because the solvents are not specifically mentioned in the claim. Thus, upon changing the extraction solvents in each of the steps, the product obtained thereby would be different. For example, if the first extraction was carried out with methanol, and the second extraction was carried out with benzene, a different product would be obtained than if the first extraction was carried out with chloroform, and the second with methanol. Thus, the product as claimed in Group II can be carried out with a materially different protocol than outlined in Group I (i.e., different solvents), and the product according to Group III which includes an olive extract, could be drawn to a materially different extract than as outlined in Group I which employs a two-step extraction process (for example, the olive extract could be simply olive oil, which is obtained via pressing or distillation). Because the products could be obtained by different extraction procedures, they are considered patentably distinct in that each product would necessarily contain different, respective phytochemical constituents which would possess distinct pharmaceutically effective properties.

Inventions I+IV and II+ V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case skin is treated with a multitude of distinct compounds/formulations depending upon the skin ailment. For example, psoriasis is known to be

treated with anthralin, methoxsalen, certain herbs and oils for example. Thus, the methods of Groups IV and V can be practiced with a materially different product.

Further, the products, olive extracts, can be used in a materially different process than as Instantly claimed. For example, olive oil is known to contain oleic acid which has been shown to lower overall blood LDL levels. Therefore, the composition could be used to lower cholesterol in individuals needing such a treatment. Secondly, olives contain cinchonidine which has been found useful in the treatment of alopecia. Thus, the composition could be used in treating baldness.

The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Because these inventions are distinct for the reasons given above and the search required for each Group is not required for the others, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Jon P. Weber, Ph.D.
Primary Examiner